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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women
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Item 4 of the provisional agenda*
Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

List of issues and questions in relation to the seventh periodic report of Malawi

Legislative and institutional framework and access to justice

1. The Committee notes that the Gender Equality Act, which was enacted in February 2013 and entered into force in April 2014, addresses various areas under the Convention, including the prohibition of sex discrimination, sexual harassment and harmful practices; the visibility of women in public life, in particular in decision-making positions; sexual and reproductive health rights; and equal educational and employment opportunities. Please describe measures taken and envisaged to disseminate the Act to all relevant government officials, including relevant law enforcement agents and the police. Please indicate whether measures have been taken to include, in the legal education and the training of judges, lawyers and prosecutors, the rights of women under the Convention and the Optional Protocol thereto, the Act and other related national legislation. As recommended by the Committee in its previous concluding observations (CEDAW/C/MWI/CO/6, para. 19) and in the light of the Act, please provide information on the extent to which the national gender policy has been revised to be aligned with the Act, as well as the time frame for its adoption.

2. Please provide information on measures taken to enhance women's capacity to enforce their rights, in particular in civil matters and in areas covered by the Gender Equality Act, focusing on the rights of illiterate women and rural women. Please provide information on progress made in establishing a decentralized and independent legal aid bureau, pursuant to the Legal Aid Act (2010), and on the human and financial resources allocated to it for its effective functioning. Please describe how customary justice mechanisms function and their relationship with the formal justice system.

* CEDAW/C/62/1.

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3. The Committee notes that a provision criminalizing sexual relations between men currently exists and that, in 2011, an amendment to the Penal Code introduced a new provision criminalizing sexual relations between women. Please indicate whether any steps are envisaged to decriminalize same-sex relations between consenting adults and to recognize the rights of lesbian, bisexual and transgender women and intersex persons to equality and non-discrimination, as well as to review section 20 of the Constitution to include sexual orientation among the grounds on which discrimination is prohibited.

National machinery for the advancement of women

4. As recommended by the Committee in its previous concluding observations (CEDAW/C/MWI/CO/6, para. 19), please provide information on measures taken to strengthen the capacity and authority of the Ministry of Gender, Children, Disability and Social Welfare. Please indicate whether coordination mechanisms with other relevant ministries have been established to ensure the effective mainstreaming of gender into all government agencies. Please describe steps taken to enhance the Ministry's cooperation with a full range of civil society organizations, including youth and women's organizations, at the national and community levels. Furthermore, in the light of the mandate of the Human Rights Commission on the enforcement of the Gender Equality Act, and as provided for in the Act, please provide information on measures taken to increase the Ministry's human, technical and financial resources and clarify the division of roles and responsibilities between the national machinery and the Commission in the implementation and monitoring of the Act, as well as mechanisms for cooperation between the two entities.

Stereotypes and harmful practices

5. According to the State party's report, numerous social, religious, traditional, customary and cultural practices promote the notion that women are inferior to men (CEDAW/C/MWI/7, para. 31).[1] Please provide information on efforts made to change the public's attitude and social and cultural patterns that lead to gender stereotyping in relation to the roles of women and men in the family, the community and society at large, including through collaboration with traditional and community leaders, as well as women's organizations.

6. The Committee notes that the Child Care, Protection and Justice Act (2010) and the Gender Equality Act both explicitly prohibit harmful practices. Please clarify which harmful practices are covered by the acts and provide information on measures taken to ensure their full enforcement, in particular in rural areas. Please indicate which measures have been taken, including comprehensive educational measures and awareness-raising campaigns about the new legislative framework, targeting rural areas in particular, to prevent and address prevalent harmful practices such as early and forced marriage, female genital mutilation, "widow cleansing" and the ritual deflowering of young girls during initiation ceremonies, as well as the practice of encouraging young boys to have sex with older women or young girls to become men and the practice of prescribing sex with girls or women with albinism as a cure for HIV.

[1] Unless otherwise indicated, paragraph numbers refer to the seventh periodic report of Malawi.

Violence against women

7. Please provide information on progress made in reviewing the Prevention of Domestic Violence Act (2006) to address its legal gaps and inconsistencies and indicate whether the envisaged amendments include the criminalization of marital rape. Please clarify the evidentiary requirements applied in cases of sexual violence and provide information on the effectiveness of measures taken to combat violence against women, in particular rape and domestic violence. In particular, please provide disaggregated statistical data on the number of cases of gender-based violence reported during the reporting period, including between unmarried intimate partners, as well as on the number of investigations, prosecutions, convictions and sentences imposed on perpetrators. Please provide information on results achieved from the implementation of the National Response to Combat Gender-based Violence (2008-2013) and indicate whether an evaluation has been conducted.

Trafficking in and exploitation of prostitution

8. The State party has acknowledged that the incidence of trafficking in persons, including within its borders, is increasing at an alarming rate (para. 174). Please provide comprehensive data and statistics on the prevalence and forms of such trafficking in the State party. The Committee notes that anti-trafficking legislation has recently been adopted and is awaiting presidential assent. Please provide information on the time frame for its entry into force and on its content, including on the definition of trafficking, and describe measures envisaged to ensure the training of relevant law enforcement officials, in particular border officials, and the wider dissemination of the law to the public. Please describe measures in place or envisaged to address reported cases of women and girls trafficked to neighbouring countries such as Mozambique and South Africa, including for the purpose of domestic work and sexual exploitation in brothels, and child labour in bars and adult entertainment venues in Blantyre and Lilongwe. Please indicate whether any cooperation and information exchange mechanisms have been established with neighbouring countries and provide information on the steps taken by the State party to provide assistance, protection and rehabilitation services to victims of trafficking.

9. In its report, the State party is silent on the prevalence of prostitution. Information before the Committee indicates that the applicable legal framework sanctions women engaged in prostitution and treats them as criminals. Please provide information on the prevalence of prostitution and indicate whether the State party envisages removing criminal sanctions for women engaged in prostitution. Please also indicate whether any programmes are available to women wishing to leave prostitution.

Participation in political and public life

10. Please provide information on positive measures taken or envisaged to implement the gender-neutral quota of 40 per cent contained in the Gender Equality Act. In its report, the State party mentions that more women than men vote in elections (para. 44). Please describe measures taken to translate women's engagement as voters into leadership roles, including by providing targeted training and mentoring to current and potential women candidates. Following the tripartite elections conducted in 2014, women continue to be underrepresented in appointed

and elected political decision-making positions. Please indicate whether incentives are envisaged to encourage political parties to nominate equal numbers of women and men as candidates. Please provide information on the specific measures being taken to ensure the equal representation of women in decision-making bodies, both in the public and private spheres of life, in particular in the National Assembly, the civil service and international organizations and as local councillors and traditional leaders.

Nationality

11. In its report, the State party indicates that the Department of Immigration has taken note of the discriminatory effect of section 9 of the Citizenship Act, that a request for its comprehensive review has been submitted to the Law Commission and that, as an interim measure, the Department does not withdraw Malawian nationality from women on the basis of their marriage to foreign men (paras. 66-67). Also according to information contained in the report, however, the Department continues to restrict women from transmitting their nationality to foreign spouses (para. 67). Please provide information on progress made to bring legislation into line with the Convention and with the Constitution, which grants men and women equal rights when it comes to acquiring and retaining citizenship (sect. 24), so that women are able to retain and transmit their nationality upon marriage to a foreign spouse, in line with general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

Education

12. Please provide updated sex-disaggregated data on the enrolment of girls at all levels, including early childhood enrolment (para. 69). While noting the adoption of the Education Act in 2013, the Committee notes the high rate at which girls drop out of school, at both the primary and secondary levels, as acknowledged by the State party, owing to marriage, pregnancy and family responsibilities (paras. 76 and 81). Please provide information on measures taken to reduce the dropout rate among girls, including a time frame for the adoption of the girl dropout policy, which is currently pending. Please also indicate whether the State party has monitored the implementation of the policy aimed at reintegrating teenage mothers into the formal school system, in order to determine its effectiveness and put corrective measures in place, as necessary. Information before the Committee indicates that structural and other barriers preventing girls and young women from gaining a good-quality education include the lack of classrooms and sanitary facilities, the significant distance to school, the limited number of qualified teachers, sexual abuse of girls in schools, poverty and the unaffordability of school fees. Please provide information on measures taken to comprehensively address those challenges and to increase the national budget allocated to education, in particular with regard to the indirect costs of education, adequate infrastructure with sanitary facilities for girls and sufficiently trained teachers. Please also provide information on progress made in adopting the Violence against Girls in Schools Policy (para. 92) and on measures taken to establish effective mechanisms for reporting abuse or violence within the educational system, as well as the zero-tolerance policy recommended by the Committee in 2010 (see CEDAW/C/MWI/CO/6, para. 31).

Employment

13. Please provide data on the wage gap between men and women. Please provide information on the extent to which unpaid care work carried out by rural women is taken into account in statistical data on employment. Please also provide information on the current status of the proposal of the Law Commission to amend the Employment Act with a view to introducing paternity leave (para. 35). In its report, the State party mentioned cases of women losing their employment because they were pregnant and that the number of women being prevented from gaining access to maternity benefits was increasing (para. 97). Please provide detailed information on the number of such cases and on sanctions imposed. Please also provide information on measures taken to fully enforce the national legislative framework, in particular with regard to maternity protection, recruitment practices, equal pay for work of equal value and promotion practices. Please indicate whether the State party envisages removing restrictive practices and regulations that are discriminatory, in particular Malawi Police Service Standing Order 31, regarding pregnancy and marriage for female police officers. In its report, the State party is silent on measures taken to enforce the prohibition of sexual harassment contained in the Gender Equality Act. Please describe the mechanisms that are in place to ensure that victims of gender-based discrimination and sexual harassment in the workplace have effective means of redress. Please provide information on any steps taken to establish a legal framework and systematic labour inspections to provide protection for girls sent by their families to be employed as domestic workers in urban areas or to work on farms (para. 77).

Health

14. Please provide information on progress made to finalize the review of the Public Health Act. Please indicate which measures are in place to reduce the high maternal mortality rates, in particular for rural women and adolescents. Please provide information on the availability of and accessibility of comprehensive age-appropriate education on sexual and reproductive health and rights, as well as of family planning services, irrespective of marital status and including adolescents. Please indicate whether measures have been taken to ensure access to affordable contraceptives and to disseminate information on contraceptive methods, including emergency contraceptives for victims of sexual violence. Please provide information on progress made with regard to the reviewing the provisions regulating abortion with a view to removing punitive provisions imposed on women who undergo an abortion and to expanding the grounds for abortion to cases of rape, incest, threat to the health of the mother and severe foetal impairment. In its report, the State party mentions that, in relation to HIV/AIDS, women in urban areas have the highest prevalence of infection (22.7 per cent) and that the revised National Response to HIV and AIDS was adopted in 2013. Please provide information on the content and status of the draft HIV/AIDS prevention and management bill and indicate whether measures have been taken to stop the mandatory testing for HIV of women arrested for engaging in prostitution.

Rural women

15. Please provide information on progress made with regard to land reforms under the proposed bill on customary land (para. 128), including reforms to protect the customary land rights of women and to promote the participation of women in

decision-making on customary land allocation and control over production resources. Please describe measures aimed at integrating a gender perspective into food and nutrition security strategies and programmes, as recommended by the Special Rapporteur on the right to food (see A/HRC/25/57/Add.1, para. 83 (b)), as well as measures taken to eradicate illiteracy among women in rural areas. It is indicated in the report that older women suspected of practising witchcraft and of teaching it to children are subjected to torture and violence (para. 130). Please provide information on measures taken to address and sanction that phenomenon and on steps taken to repeal the Witchcraft Act.

Disadvantaged groups of women

16. In the light of the increase in ritual killings, disappearances and attempts to traffic women and girls with albinism, please provide information on measures taken to address the discrimination and social exclusion faced by women and girls with albinism and to protect them from violence. Please also indicate whether any awareness-raising activities have been conducted to eliminate such discrimination.

Impact of natural disasters

17. In the light of the floods that have affected the State party recently and led to the displacement of communities, and given that such displacement disproportionately affects women, please provide information on any measures taken or envisaged to incorporate a gender perspective into national disaster management and response plans, as well as relief and recovery strategies, including to ensure the protection of displaced women and girls and to prevent early marriage, which has increased owing to the economic impact of the flooding. Please also indicate whether the State party envisages taking proactive measures to facilitate the participation of women, including at the decision-making level, in the design and implementation of policies and programmes relating to natural disasters, including risk prevention.

Marriage and family relations

18. In the light of the existence of statutory, customary and religious marriages in the State party, please indicate whether women who marry in a religious ceremony or under customary law can resort to civil courts for all matters relating to marriage, family relations and inheritance. Please provide information on the content of the Marriage, Divorce and Family Relations Law recently adopted by the parliament and on the time frame for its entry into force and clarify whether it harmonizes the age of marriage at 18 years and/or allows exceptions, regulates the issue of betrothal and provides for the compulsory registration of marriages. Please also provide information on measures envisaged to ensure its full implementation, in particular awareness-raising activities for rural women.

19. In its report, the State party mentions that there has been an increase in the number of older women who are being dispossessed by young male relatives (paras. 138 and 148). Please provide information on measures taken to address that prevalent practice and to ensure that women are informed about their rights under the new Deceased Estates (Wills, Inheritance and Protection) Act.

Optional Protocol and amendment to article 20 (1) of the Convention

20. Please indicate whether any progress has been made with regard to the acceptance of the amendment to article 20 (1) of the Convention and the ratification of the Optional Protocol.